

February 2011

INDIVIDUAL PRACTICES OF MAGISTRATE JUDGE THEODORE H. KATZ

Cases come before magistrate judge in one of two ways: for one or more specific purposes pursuant to an order of reference by the assigned district judge, or, on consent of the parties for all purposes, pursuant to 28 U.S.C. § 636(c). When a district judge approves an all-purposes consent form signed by counsel, the magistrate judge assumes the role of the district judge. Any appeal is directly to the Court of Appeals and the right to a jury trial is preserved.

It is the uniform practice of the magistrate judges in this District to schedule trials in civil consent cases for firm dates, rather than using a trailing calendar or requiring counsel to be available for trial on short notice. Additionally, because magistrate judges rarely try criminal cases, such firm trial dates are unlikely to be changed to accommodate criminal trials. Should counsel wish to consent to have Judge Katz hear their case for all purposes, the necessary form is available at <http://nysd.uscourts.gov/cases/show.php?db=forms&id=7>.

Unless otherwise ordered by Judge Katz, matters before him shall be conducted in accordance with the following practices. These practices are applicable to cases before Judge Katz if the matter is within the scope of the district judge's Order of Reference or if the case is before Judge Katz, pursuant to the parties' consent, under 28 U.S.C. § 636(c). Otherwise, the practices of the district judge to whom the case is assigned apply.

1. Communications With Chambers

A. Letters. Copies of letters to chambers shall simultaneously be delivered to all counsel. Copies of correspondence between counsel shall not be sent to the Court. Responses to letter requests to the Court, including consent to the request, must be submitted within three (3) days of receipt of the request, except in pro se cases. Pro se parties shall have five (5) days to submit a response. Failure to respond within these time frames will be construed as consent to the request.

B. Telephone Calls. Telephone calls to chambers are to be placed to (212) 805-0218. Chambers should not be called except in urgent situations, for example, for a ruling in the course of a deposition.

C. Faxes. Faxes to chambers are permitted only in matters involving an impending deadline or a situation requiring the Court's immediate attention. Copies must be simultaneously faxed or delivered to all counsel. No document longer than five (5) pages, excluding cover page, may be faxed to chambers. Do not follow with hard copy. The fax number is (212) 805-7932.

D. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, (4) why the established deadline cannot be met, and (5) whether the adversary consents, and, if not, the reasons

given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance. If the request is for the extension of a discovery deadline, it shall be made at least ten (10) days prior to the deadline.

2. Discovery Disputes

For discovery motions, follow Local Civil Rule 37.2. The written request for an informal conference shall set forth the nature and substance of the discovery dispute. A response shall be submitted within three (3) days. If relevant, copies of interrogatories or document requests that are in dispute shall be provided to the Court. A discovery or non-dispositive pretrial dispute shall not be submitted to the Court until the attorneys for the affected parties, or attorneys and a pro se litigant, have attempted to confer in good faith in an effort to resolve the dispute. Failure to bring discovery disputes to the Court's attention promptly and sufficiently in advance of the discovery deadline will result in a waiver of remedies as to such disputes.

3. Motions

A. Pre-Motion Conferences in Civil Cases. For motions other than discovery motions, pre-motion conferences are not required.

B. Courtesy Copies. For motions to be decided by Judge Katz, rather than the District Judge, courtesy copies of all motion papers, marked as such, should be submitted to chambers. Courtesy copies of pleadings, marked as such, shall be submitted to chambers as soon as practicable after filing, only if an Order of Reference has been issued to Judge Katz.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents. [Requests to file memoranda in excess of these limits shall be made in writing to the Court.]

D. Filing of Motion Papers. Motion papers shall be filed promptly after service.

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving, opposing, or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. In civil cases in which the parties have consented to proceed before Judge Katz, pursuant to 28 U.S.C. § 636(c), unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery the parties shall submit a joint pretrial order to the Court for its approval, which shall include the following:

- i. The full caption of the action;

- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel;
- iii. A brief statement as to the basis of subject matter jurisdiction. Such statement shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount;
- iv. A brief summary by each party of the claims and defenses that each party has asserted which remain to be tried, without recital of evidentiary matter, but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried;
- v. The type and amount of damages being sought on each claim, as well as any other relief being sought;
- vi. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days needed;
- vii. Any stipulations of agreed statements of fact or law that have been agreed to by all parties;
- viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition. Expert witnesses shall be so designated;
- ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party; and
- x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

B. Filings Prior to Trial in Civil Cases. Unless otherwise ordered by the Court, 15 days before the date of the commencement of trial if such a date has been fixed, or 30 days after the filing of the final pretrial order if no trial date has been fixed:

- i. In jury cases, requests to charge and proposed voir dire questions. The parties shall attempt to submit a joint proposed charge, and if they are unable to do so, shall submit legal support for their version of the portions of the charge as to which there is disagreement. All proposed charges on substantive issues, other than boilerplate issues, shall contain legal authority for the proposal. When feasible, proposed jury charges and voir dire should also be submitted on a CD Rom in WordPerfect or Word format;
- ii. In non-jury cases, a statement of the elements of each claim or defense

asserted by such party, together with a summary of the facts relied upon to establish each element. In addition, there shall be an itemization of the damages and other relief being sought with respect to each claim, with citation to legal authority for such damages or other relief; and

iii. In all cases, motions addressing any evidentiary or other issues that should be resolved in limine.

iv. In any case where a party believes it would be useful, a pretrial memorandum.